

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Notice of Inquiry Concerning a Review of the
Equal Access and Nondiscrimination Obligations
Applicable to Local Exchange Carriers

CC Docket No. 02-39

COMMENTS OF GENERAL COMMUNICATION, INC.

General Communication, Inc. (GCI) submits these comments in response to the Commission's *Public Notice*¹ requesting that parties update the record with market developments pertinent to the equal access and nondiscrimination obligations applicable to local exchange carriers. As GCI demonstrates below, the equal access rules remain necessary to protect long distance competition, at a minimum, in all local exchange markets not subject to actual competition. Furthermore, the Commission should not relax equal access obligations in the residential or mass market based on local competition in the enterprise market, and vice versa. Local competition for the large enterprise customer and the residential consumer are in no way interchangeable. The Commission should likewise retain equal access obligations even where there is local competition, as consumers benefit from being fully informed of all available competitive choices.

I. Developments in the Alaska Local Exchange Markets since the Original Notice.

¹ *Parties Asked to Refresh Record Regarding Review of Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, Public Notice, DA 07-1071 (rel. Mar. 7, 2007) ("*Public Notice*").

GCI is an Alaska-based company that provides competitive local and long distance voice, video and data communications services. As GCI explained in its initial comments,² GCI has a long history of bringing innovative services at competitive prices to Alaska consumers. In addition, GCI's competitive presence has consistently spurred improvements in service quality and pricing by GCI's competitors, and thus has brought the benefits of competition to all Alaskans. GCI's efforts to improve both the quality and pricing of interexchange service – efforts that include its introduction of digital satellite transmission, echo cancellation and demand assigned multiple access technology – have been rewarded in the marketplace, as GCI now serves more than 50% of the interexchange market in Alaska.

At the time GCI filed its initial comments in this proceeding, GCI provided local service in only three Alaska local exchange markets: the Anchorage, Fairbanks, and Juneau study areas. All Alaska local exchange markets other than Anchorage are served by a rural local exchange carrier, with some served by local affiliates of ACS, the largest ILEC in Alaska, and others served by other rural independent LECs. In addition to offering local exchange service in many Alaska markets, ACS provides interexchange service through its long distance affiliate. In local exchange markets served by non-ACS RLECs, interexchange service is frequently available from a provider affiliated with the local RLEC.³ As a consequence, many of Alaska's rural markets are served by local carriers with both a monopoly on local exchange service and an affiliated interexchange provider.

Recently, GCI received state regulatory authorization to begin providing local exchange service throughout Alaska. These authorizations are, however, just the first of many steps GCI must take before it can offer service in these rural areas. GCI has not yet constructed the

² Comments of General Communication, Inc. (filed May 10, 2002) (herein incorporated by reference).

³ In many cases, these services are provided through resale rather than through the RLEC's own facilities.

facilities or reached the interconnection agreements that are necessary to offer local exchange services in most rural Alaska study areas. Further, GCI's experience thus far indicates that GCI will face any number of additional obstacles as it works to enter local markets and bring competition to local exchange customers in remote Alaska. In Seward, for example, GCI has been forced to request Accelerated Docket treatment for its prospective complaint to enforce the Commission's interim interconnection requirement and ensure that GCI can expeditiously enter the local exchange market.⁴ Furthermore, notwithstanding the fact that toll dialing parity has been the law of the land since 1996, some ILECs in Alaska have taken, and are taking, more than two years to implement dialing parity, needlessly drawing out implementation under cover of decades-old equal access processes.

Moreover, because populated areas in Alaska are widely dispersed, with villages in a single study area often linked only by satellite and not by wireline facilities, actual entry into local markets will necessarily proceed incrementally. As a consequence, entry into one village within a study area will not mean that competition is immediately available throughout the study area. The location of GCI's cable plant – the backbone of GCI's planned facilities-based deployment – in predominantly residential areas of the larger cities and regional centers similarly dictates that full facilities-based competitive local entry in those areas will begin in the residential markets. GCI will expand its facilities to additional villages and markets as quickly as it can (and faces strict build-out and service requirements in all of its certified rural Alaska study areas), but cannot simultaneously bring competition to all areas and markets. In all areas of Alaska where GCI has not begun to offer local service, there is no competition for local exchange access service.

⁴ See Complaint, *General Communication, Inc. v. Interior Telephone Co., Inc.* (filed May 4, 2007); Letter from John T. Nakahata, Counsel for GCI, to Alex Starr, Chief, Market Dispute Resolution Division, Enforcement Bureau (May 4, 2007) (requesting inclusion on the Accelerated Docket).

In areas where there is a monopoly on the mass market provision of local exchange service, such as these Alaskan rural study areas and non-competitive villages, competition in the interexchange market remains vulnerable to discrimination by ILECs. In other words, the competitive conditions that currently exist in these areas are the same competitive conditions that existed at the time the equal access obligations were imposed and at the time the Commission initially solicited comment in this docket. Similarly, local competition in the mass market, when it does eventually exist, will not necessarily mean that competition exists in the enterprise markets.

II. The Continuing Importance of Equal Access Obligations.

Equal access requirements were originally imposed on BOCs pursuant to the AT&T Modification of Final Judgment (MFJ)⁵ and were then extended by Commission order to incumbent, independent LECs.⁶ Both the MFJ and the Commission imposed equal access requirements to correct existing discrimination in favor of AT&T and to prevent such discrimination from recurring in the future as a result of ILECs' continued control of the local exchange bottleneck.⁷

The Commission recognized that control of the local exchange bottleneck gave both BOCs and ILECs the ability and incentive to engage in discrimination regarding a customer's

⁵ Equal access requirements were imposed on BOCs in the AT&T Modification of Final Judgment ("MFJ"), which was adopted in *United States v. American Tel. & Tel. Co.*, 552 F.Supp. 131 (D.D.C. 1982) (subsequent history omitted). Before GTE became part of Verizon, it was subject to equal access requirements contained in a Consent Decree adopted in *United States v. GTE Corp.*, 603 F.Supp. 730 (D.D.C. 1984) (subsequent history omitted).

⁶ *MTS and WATS Market Structure Phase III*, Report and Order, 100 F.C.C. 2d 860, 877-78 (¶ 59) (1985) ("*Independent Telephone Company Equal Access Order*") (interpreting the "features of equal access services that have been set forth in the MFJ [and the GTE Consent Decree] as being equally valid in their application" to incumbent independent ILECs).

⁷ See *United States v. American Tel. & Tel. Co.*, 552 F.Supp. at 142 (indicating that the equal access requirements were "designed (1) to prevent the divested Operating Companies from discriminating against AT&T's competitors, and (2) to avoid recurrence of the type of discrimination and cross-subsidization that were the basis of the AT&T lawsuit").

choice of interexchange carrier.⁸ To protect the public interest in competition in the interexchange market, the Commission required in the *Allocation Orders* that BOCs and ILECs taking a verbal order for new service read to the customer, in random order, the names of the IXCs from whom the customer could elect to purchase service.⁹

The 1996 Act retains the nondiscrimination and equal access marketing requirements on ILECs that the Commission imposed through the *Allocation Orders* and the *Independent Telephone Company Equal Access Order*. Section 251(g) of the Act explicitly preserves the equal access and nondiscriminatory interconnection restrictions and obligations that existed at the passage of the 1996 Act “under any court order, consent decree, or regulation, order, or policy of the Commission.”¹⁰

Although the Commission has inquired about whether changing market conditions have obviated the need for these equal access obligations,¹¹ it would be against the public interest for the Commission to lessen the equal access obligations of ILECs in areas where there is no competition in the local exchange and no alternative access to competitive IXC services, including areas where the Section 251(f)(1) rural exemption, or a Section 251(f)(2) suspension or modification of Section 251(b) or (c), is actually precluding one or more forms of local competition. Equal access obligations must also remain in place in product markets that lack

⁸ *Investigation of Access and Divestiture Related Tariffs*, 101 F.C.C.2d 911 ¶ 22 (1985) (subsequent history omitted) (“*Allocation Order*”) ¶¶ 22, 32 (saying the “marketing advantage that AT&T [and ILECs] enjoy[in the IXC market] is not predicated on any quality or pricing difference but rather on its historical monopoly position”).

⁹ *Investigation of Access and Divestiture Related Tariffs*, 101 F.C.C.2d 935 ¶ 40 (subsequent history omitted) (“*Allocation Waiver Order*”) modifying the *Allocation Order*.

¹⁰ See 47 U.S.C. § 251(g).

¹¹ We note that there are additional statutory equal access requirements that would remain should the Commission supersede its pre-1996 orders imposing equal access marketing requirements pursuant to its authority in Section 251(g). Section 251(b)(3) would still require all LECs “to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.”

competition, irrespective of the section 251(f) exemptions, suspensions or modifications, even if there is competition in other product markets in a particular local exchange market. For example, where a competitive provider provides only residential local access service, equal access obligations should remain in place for business local access service. Moreover, even where there is competition in local exchange markets, equal access requirements can benefit consumers by ensuring that they are fully informed of all of their choices and are free to select between bundled local and long distance service or a la carte offerings.

Because market conditions have not changed in those areas where ILECs such as ILECs subject to the rural exemption continue to maintain a monopoly on local service, including product market monopolies, there is no basis for lifting these obligations. The mere passage of time since adoption of the 1996 Act does not justify lifting conditions that are still necessary to constrain abuses of monopoly power. Simply put, if the equal access marketing requirements are lifted or lessened, the public interest in competition will not be protected from ILECs' incentive and ability to discriminate through abuse of their monopoly power over the local market.

This concern is not hypothetical. The vast majority of Alaska local exchange markets outside of Anchorage, Fairbanks and Juneau are not yet subject to competition. This situation is likely repeated in rural and underserved areas throughout the United States. These customers should not be denied the benefits of competition in the IXC market simply because there is an absence of competition in their local exchange markets. For this reason, the Commission should maintain its equal access rules in all markets that do not benefit from local competition or that would not otherwise provide competitive IXC service options in the absence of equal access.

In markets that lack local competition, the market conditions identified in the Commission's *Public Notice* do not alter the need for equal access rules. Where there is no local

competition, there can be no competition for bundles of services that include local and long distance. In these markets, competition exists only between stand-alone long distance services, and the inability of stand-alone long distance providers to compete with bundled local and long distance service packages heightens the need for equal access protections in these markets. The public interest thus particularly requires that the Commission maintain its equal access rules in any local exchange market that is not actually served by a competitive carrier.

Because only the presence of actual existing competitive alternatives is sufficient to counter ILEC abuses of monopoly power in the local exchange, the Commission should, at a minimum, retain its equal access requirements in all local exchange markets, including product markets such as business or residential services, until local exchange service is available from a competitive carrier through which competitive long distance options are available. The Commission should not lift equal access requirements upon certification of a competitive carrier or upon entry into a single product or sub-study area geographic market, as mere certification or partial entry will not ensure that consumers have the choices necessary to render equal access requirements unnecessary.

III. Conclusion.

Because ILECs still exercise monopoly control over their local exchange networks in rural areas, they have the incentive and ability to discriminate against IXCs in the absence of equal access safeguards. Therefore, in rural areas and other areas without local exchange access competition, and thus, no alternative access to IXC services, the public interest requires that the Commission retain the pre-1996 Act equal access marketing obligations until actual competition in the mass market is achieved.

Respectfully Submitted,

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